ICRC No.:EMse14040282
[redacted]

[redacted]
Complainant,

v.

R.R. DONNELLEY &SONS COMPANY,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On April 11, 2014, [redacted] ("Complainant") filed a Complaint with the Commission against R.R. Donnelley & Sons Company, ("Respondent") alleging discrimination on the basis of sex and specifically, pregnancy, in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000e, *et seq.*) and the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter. An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented before the Commission is whether Respondent treated Complainant less favorably than similarly-situated non-pregnant employees. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations at the time of her termination; and (4) similarly-situated non-pregnant employees were treated more favorably under similar circumstances. It is evident that Complainant falls within a protected class by virtue of her gender and pregnancy and undisputed that she suffered an adverse employment action when Respondent terminated her employment on or around March 25, 2014. However, it is clear that Complainant was meeting Respondent's legitimate business expectations at the time of her termination and that similarly-situated employees who were not pregnant were treated more favorably under similar circumstances.

By way of background, Complainant was hired by Respondent on or about August 25, 2013 as a contingent material handler. At all times relevant to the Complainant, her duties included but were not limited to loading stacks of signatures or groupings of printed pages onto pallets for binding and shipment and lifting loads up to 50 pounds. Further, as a contingent worker, Complainant was ineligible for benefits such as medical, sick, or disability leave; however, no evidence has been provided or uncovered to show that contingent workers were ineligible for light duty assignments. Moreover,

Respondent admits that it provides light duty assignments but reserves them for employees injured on the job.

During the course of Complainant's employment, evidence suggests that Complainant was meeting Respondent's legitimate business expectations. However, in March 2014, Complainant informed her supervisor that she was pregnant and having issues lifting the pallets and books. Evidence shows that Respondent asked Complainant to provide a doctor's note documenting her pregnancy-related restrictions and as such, on or about March 19, 2014, Complainant provided Respondent with a physician's statement prohibiting her from lifting more than 20 pounds for six months. Shortly thereafter, evidence shows that Complainant spoke with Respondent's nurse regarding the prohibitions who determined that Respondent could not accommodate her restrictions. Nonetheless, on or about March 24, 2014, her supervisor placed her on the light duty assignment of operating the hand-feeding machine in the back where she proceeded to work for two hours. However, later that evening, Respondent called Complainant into the office where Respondent's representative Greg (LNU) informed her that he had received an email stating that she was to be terminated because they could not accommodate her restrictions. Greg (LNU) also informed her that she could reapply for a position with Respondent once she was able to work.

Despite Respondent's assertions, there is insufficient evidence to support its claims. Rather, Respondent admits, in relevant part, that "while light duty work is occasionally available, it generally reserves these assignments for employees with work-related injuries." The Pregnancy Discrimination Act ("PDA") ensures that if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer must treat her in the same manner it treats other temporarily impaired or disabled employees. Evidence shows that Respondent provided Complainant with light duty work for approximately two hours prior to terminating her employment. Moreover, Respondent admits that it has light duty assignments available; as such, Respondent's reason for terminating Complainant's employment lacks credibility and appears to be pretext for discrimination on the basis of sex and pregnancy. Simply stated, Respondent's failure to offer Complainant light duty work while reserving it for employees injured on the job is in contravention of the relevant laws and; as such, and based upon the aforementioned, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may elect to have these claims heard in the same circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

November 6, 2014
Date

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